

(10)
5-23-01
MTA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ERIC BERRINGER,

Petitioner

v.

PENNSYLVANIA BOARD
OF PROBATION AND
PAROLE, et al.,

Respondent

CIVIL NO. 1:CV-00-1994

(Judge Rambo)

(Magistrate Judge Blewitt)

FILED

HARRISBURG, PA

MAY 23 2001

ORDER

MARY E. D'ANDREA, CLERK
Per MTA
Deputy Clerk

Before the court is an April 19, 2001, report of the magistrate judge in which he recommends that the petition for writ of habeas corpus be dismissed for failure to exhaust state remedies and, in the alternative, for failure to state a cause of action. Petitioner has filed exceptions to the report.

Petitioner claims that the Board of Probation and Parole made changes to parole eligibility requirements which violated the *ex post facto* clause of Article I, Section 10 of the United States Constitution and that his denial of parole constituted a violation of substantive due process. Respondent raises the failure to exhaust issue.

It is unclear whether the Pennsylvania state appellate courts will entertain a challenge to the denial of parole based on constitutional grounds, which is the questions certified to the Supreme Court of Pennsylvania by the Third Circuit Court of Appeals in the case of Coady v. Vaughn, No. 98-1311.

Certified from the record

Date 5-23-01
Mary E. D'Andrea, Clerk

Per MTA
Deputy Clerk

Therefore, until this certified question is addressed by the Pennsylvania Supreme Court, this court will not dismiss on exhaustion.

The magistrate judge does address the merits of the claim regarding *ex post facto* and substantive due process and finds these issues lacking in merit. In Petitioner's objections to these findings he does nothing more than say these are "in error." He further requests this action be stayed pending disposition of Coady.

It is unnecessary to stay as a review of the case law as applied to the facts of this case support the magistrate judge's finding that the instant suit has no merit. **IT IS THEREFORE ORDERED THAT:**

- 1) The court adopts in part and rejects in part the report and recommendation of Magistrate Judge Blewitt.
- 2) The captioned action is dismissed for failure to state a claim.
- 3) This court declines to issue a certificate of appealability.
- 4) The Clerk of Court shall close the file.

Dated: May 23, 2001.


SYLVIA H. RAMBO
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

May 23, 2001

Re: 1:00-cv-01994 Berringer v. PA Board of Probatio

True and correct copies of the attached were mailed by the clerk
to the following:

Eric Berringer
SCI-R
SCI at Rockview
BV-2424
P.O. Box A
Bellefonte, PA 16823

Seth A. Mendelsohn, Esq.
Office of the Attorney General
15th Floor, Strawberry Sq.
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Michael B. Fisher
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Harrisburg, PA 17120

DA Snyder County
PO Box 217
Middleburg, PA 17842

cc:

Judge	(X)	Rambo	()	Pro Se Law Clerk
Magistrate Judge	(X)	Blewitt	()	INS
U.S. Marshal	()		()	Jury Clerk

Probation	()
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U.S. Attorney	()
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Atty. for Deft.	()
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Defendant	()
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Warden	()
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Bureau of Prisons	()
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Ct Reporter	()
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Ctroom Deputy	()
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Orig-Security	(X)
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Federal Public Defender	()
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Summons Issued	()	with N/C attached to complt. and served by:
	()	U.S. Marshal () Pltf's Attorney ()

Standard Order 93-5	()
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Order to Show Cause	()	with Petition attached & mailed certified mail
	()	to: US Atty Gen () PA Atty Gen ()
	()	DA of County () Respondents ()

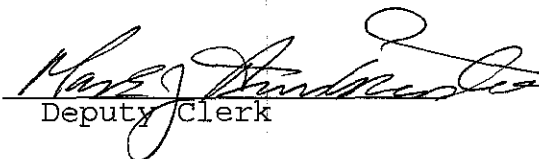
Bankruptcy Court	()
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Other _____	()
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MARY E. D'ANDREA, Clerk

DATE: May 23rd, 2001

BY:



Deputy Clerk